

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:09-CV-479

FEN-PHEN SERIES 2005-01, a series of)
CAP TRAN FUNDING, LLC,)
)
Plaintiff,)
)
v.)
)
JAMES S. FARRIN, P.C.,)
)
Defendant.)
_____)

MOTION TO DISMISS

Defendant James S. Farrin, P.C. hereby moves the Court to dismiss Plaintiff Fen-Phen Series 2005-01, a series of Cap Tran Funding, LLC's Complaint in its entirety pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

In its Complaint, Plaintiff raises claims against Defendant for: (1) breach of contract as an alleged third-party beneficiary; (2) tortious interference with contract; and (3) unfair and deceptive trade practices. For the reasons set forth more fully in the brief in support of this motion, which is filed contemporaneously herewith and incorporated by reference, Plaintiff has failed to state a claim upon which relief can be granted for each asserted cause of action. Specifically, as evident from the facts as alleged in the Complaint and clear from the face of the various contracts attached thereto as exhibits, Plaintiff is not a direct, intended beneficiary to the contract alleged to have been breached and Defendant, a member of the learned legal profession, acted at all times for legitimate purposes.

WHEREFORE, Defendant respectfully requests that the Court grant its Motion to Dismiss and that Plaintiff's action be dismissed in its entirety.

This the 17th day of August, 2009.

/s/ James L. Gale

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **MOTION TO DISMISS** was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to Plaintiff's counsel of record.

This the 17th day of August, 2009.

/s/ T. Matthew Creech

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